

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2715 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RANJANBEN AMARSINHBHAI KOLI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner Ranjanben Amarsinhbhai Koli, has brought under challenge the detention order passed against her on 23rd March 1996 under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the petitioner has been carrying on anti-social activities of storing and dealing in liquor and also creating an atmosphere of fear through her associates. The following prohibition offences have been registered against her in Rajkot "B" Division Police Station :

1. CR 163/95 Under Sections 66B, 65-E of the Prohibition Act. The matter is pending before the Court.

2. CR 265/95 - do -

3. CR 297/95 - do -

4. CR 427/95 - do -

5. CR 117/96 Under Sections 66B, 65-E of the Prohibition Act. The investigation is in progress.

3. After setting out the facts with regard to the aforesaid complaints the detaining Authority has stated the facts flowing from the statements of three witnesses who have said about the incidents which occurred on 3.3.1996, 25.2.1996 and 20.2.1996. The statements, inter alia, show how the petitioner has been causing atmosphere of fear to arise with the aid of her associates while beating the concerned witnesses.

4. It is on the aforesaid incidents that the Detaining Authority passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a boot-legger under Section 2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter alia on the ground that there is no material to indicate that the detenu's conduct would show that she is habitually engaged in the anti-social activity which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a

conclusion that the same would affect public order. Reliance has been placed on the following decisions of the Apex Court :

Mustakmiya Jabbarmiya Shaikh v/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in Para : 11 and 12 of the citation and it has been submitted that the facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. In reply Mr.K.C.Shah, learned A.G.P. for the State has relied upon a decision of Mrs.Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra & anr., reported in A.I.R. 1992 SC 979. Comparing the fact of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Harpreet Kaur's case would not be applicable, but as a matter of fact the decision of Mustakmiya's case (supra) would be applicable.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (Supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Ranjanben Amarsinhbhai Koli shall be forthwith set at liberty if she is not required to be detained in any other case. Rule made absolute accordingly.

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